

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 24, 2002

IN RE:

APPROVAL OF THE INTERCONNECTION  
AGREEMENT BETWEEN KMC TELECOM  
HOLDINGS, INC. D/B/A KMC III, INC. AND KMC  
TELECOM V, INC. AND UNITED TELEPHONE-  
SOUTHEAST, INC. PURSUANT TO SECTIONS 251  
AND 252 OF THE TELECOMMUNICATIONS ACT  
OF 1996

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) DOCKET NO. 02-00194  
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ORDER APPROVING INTERCONNECTION AGREEMENT

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The *Petition for Approval of the Interconnection Agreement Between KMC Telecom Holdings, Inc. d/b/a KMC Telecom III, Inc. and KMC Telecom V, Inc. and United Telephone-Southeast, Inc. Pursuant to the Telecommunications Act of 1996* ("Petition for Approval") and the *Supplemental Petition* came before the Tennessee Regulatory Authority (the "Authority") at the April 30, 2002 Authority Conference.

The parties filed the *Petition for Approval* and the Agreement on February 22, 2002 pursuant to the directive of the Hearing Officer assigned to Docket No. 01-00964.<sup>1</sup> On March 22, 2002, the parties filed the *Supplemental Petition* thereby supplementing the *Petition for Approval* and the Agreement.

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<sup>1</sup> Transcript of Proceedings, Mar. 4, 2002, pp. 29-33 (Pre-Hearing Conference - *In Re: Complaint of KMC Telecom III, Inc. and KMC Telecom V, Inc. Against United Telephone-Southeast, Inc.*, Docket No. 01-00964). Although the issues contained in Docket No. 01-00964 involve the parties' interconnection agreement, the parties had not presented an interconnection agreement to the Authority for its approval. Therefore, the Hearing Officer directed the parties to file their interconnection agreement. *See id.*

Based upon the Petitions, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously approved the Agreement and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The Agreement is in the public interest as it provides consumers with alternative sources of telecommunications services within the United Telephone-Southeast, Inc. service area.
- 3) The Agreement is not discriminatory to telecommunications service providers that are not parties thereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).<sup>2</sup> Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the Agreement is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.<sup>3</sup>
- 5) No person or entity has sought to intervene in this docket.
- 6) The Agreement is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

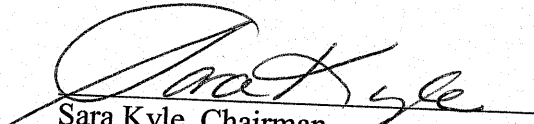
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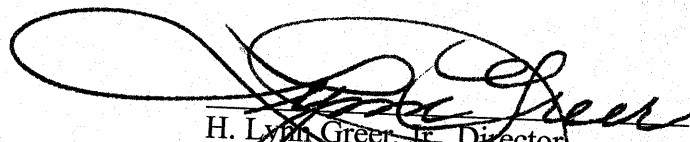
<sup>2</sup> See 47 U.S.C. § 252(e)(2)(B)(Supp. 2001).

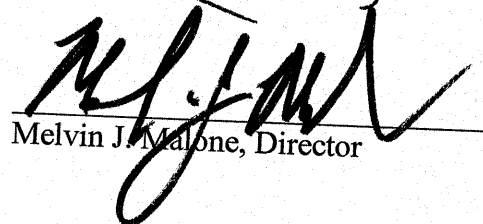
<sup>3</sup> The Authority has issued a request to BellSouth requesting that it provide to the Authority a detailed filing explaining any provisions of the interconnection agreement that differ from previous Authority decisions. BellSouth has not responded to this request.

**IT IS THEREFORE ORDERED THAT:**

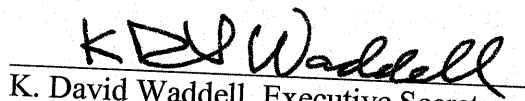
The Interconnection Agreement negotiated between United Telephone-Southeast, Inc. and KMC Telecom Holdings, Inc. d/b/a KMC Telecom III, Inc. and KMC Telecom V, Inc. is approved and is subject to the review of the Authority as provided herein.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary